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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/623,310 | 07/18/2003 | Peter Louis Gebrian | DCS-9178 | 3469 |

34500 7590 10/03/2005

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DEERFIELD, IL 60015

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| EXAMINER |
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CROSS, LATOYA I

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| ART UNIT | PAPER NUMBER |
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1743

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/623,310 | GEBRIAN ET AL. | |
| | Examiner | Art Unit | |
| | LaToya I. Cross | 1743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' amendments filed on July 8, 2005. Claims 1-6 are pending.

Withdrawal of Rejections from Previous Office Action

- The rejection under 35 USC 112, second paragraph is withdrawn in view of Applicants' amendment to claim 1 such that it positively recites the presence of a reagent container loading tray, reagent server and reagent carousel.
- The anticipation rejection over Devlin, Sr. et al is withdrawn in view of Applicants' statement and declaration stating that the instant invention and the reference were commonly owned at the time the invention was made.
- The obviousness-type double patenting rejection is withdrawn in view of Applicants' timely filed Terminal Disclaimer.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-6 are rejected under 35 U.S.C. 102(a) as being anticipated by US patent 6,571,934 to Thompson et al.

Thompson et al teach a system for bi-directional shuttling cuvettes throughout an

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analyzer. The system comprises a single bi-directional linear device transport mechanism (90LT) that includes a single input-output lane (72/74) formed along the operating surface. See figure 3. At col. 8, lines 55-58, Thompson et al teach that after liquid is aspirated into the sample tube rack (42), a shuttle mechanism positions the sample rack onto the bi-directional transport lane, as recited in claim 2. The reference also teaches a shuttle mechanism (80, 80A), sample tube rack (42) and buffer zone (84) for storing the sample tube rack, as recited in claim 3. With respect to claim 4, Thompson et al teach concentric carousels having an outer carousel (14) and an inner carousel (16). Shuttle mechanism (80) serves a first transfer device, while shuttle mechanism (80A) serves as a second transfer device. Thompson et al further teach a reaction carousel (12) having reaction vessels (19), as recited in claim 6 (col. 7, lines 1-3).

It is noted that Applicants refer to "reagent" container and carousel, while Thompson et al teach a "cuvette" carousel. However, Thompson et al teach that the cuvettes carousels contain reagent and sample (col. 6, lines 1-17). Thus, absent some express difference between the reagent carousel claimed and those taught by Thompson et al, the reference reads on the claimed invention.

Response to Arguments

3. Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive. Applicants have overcome the rejection under 35 USC 102(e) by stating and showing that the instant invention and the Thompson reference were commonly owned at the time the invention was made. However, the Thompson reference also qualifies as prior art under 35 USC 102(a) because its publication date (June 3, 2003) was prior to the filing date of the instant invention (July 18, 2003). Thus, Applicants' statement of common ownership is insufficient to overcome the rejection under 35 USC 102(a).

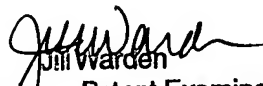
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden
Supervisory Patent Examiner
Technology Center 1700